Burlington Industries, Inc., Kernersville Finishing Plant *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO. Cases 11-CA-8381, 11-CA-8536, 11-CA-8548, 11-CA-8785, and 11-RC-4708

August 14, 1981

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND ZIMMERMAN

On October 21, 1980, Administrative Law Judge Abraham Frank issued the attached Decision in this proceeding. Thereafter, Respondent, the General Counsel, and Charging Party (herein ACTWU or Union) filed exceptions and supporting briefs, the AFL-CIO filed a motion to intervene or alternatively to file an *amicus curiae* brief, and Respondent filed an answering brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge, as elaborated on and modified below, and to adopt his recommended Order, as modified below.

We find that a bargaining order is warranted in this case as a remedy for the myriad unfair labor practices committed by Respondent which the Administrative Law Judge found. In *N.L.R.B.* v. *Gissel Packing Co.*,[3] the Supreme Court held that a bargaining order should issue where the unfair labor practices of an employer have so decreased the chance of a fair election that the already expressed desires of employees for representation are a more reliable indication of free choice than an election would be.[4] Here, the Union began its organizational campaign at the Kernersville plant on April 27, 1979,[5] and requested recognition on May 14. Commencing on May 11, Respondent committed extensive and pervasive unfair labor practices, which continued and intensified from that time to July 20, the day of the election. In May Respondent discharged a leading union adherent. Prior to the discharge, Respondent had interrogated the discriminatee, Meadows, about union activity, created the impression of surveillance, solicited grievances, and threatened discharge of union supporters.[6] Subsequent to this discharge and its other unlawful conduct Respondent repeatedly threatened employees with discharge and loss of jobs. Employees were confronted on numerous occasions with the threat of plant closure.[7] Respondent also implied that employees discharged for union activity would not be able to secure a job in Respondent's geographic area; i.e., employees were threatened with "blackballing" or "blacklisting."[8] Further, Respondent restricted the movement of union sympathizers, interrogated other employees, and made promises of benefits and threats of decreased benefits, all because of union activities. The Union lost the election held on July 20. The tally was 69 for, and 74 against, representation. We find, in agreement with the Administrative Law Judge, that Respondent's unlawful conduct undermined the Union's card majority and has made the possibility of holding a fair representation election extremely unlikely.

Despite finding these extensive and pervasive unfair labor practices the Administrative Law Judge did not issue a *Gissel* bargaining order in favor of the Union. In the Administrative Law Judge's opinion such a bargaining order could not issue because the authorization cards used during the organization campaign did not sufficiently identify the Union as the employees' collective-bargaining representative. We disagree.

The facts and circumstances regarding the authorization cards are not in dispute. As more fully set forth by the Administrative Law Judge, the

[1] The AFL-CIO filed its motion on the basis, *inter alia*, that the authorization cards involved in this case designated "the AFL-CIO and/or its appropriate affiliates" to represent employees, that the petition was filed originally by the Industrial Union Department (IUD) of the AFL-CIO, and that the ACTWU is an AFL-CIO affiliate. Respondent filed an opposition to both the motion to intervene and request to file an *amicus curiae* brief. We deny the motion to intervene, but grant the request to file an *amicus curiae* brief.

[2] Respondent contends that the Administrative Law Judge was biased and prejudiced against Respondent. We have carefully reviewed the record and the Decision in light of Respondent's contention and conclude this contention is without merit.

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Union excepted to the Administrative Law Judge's finding that Respondent's termination of employee Bailey did not violate Sec. 8(a)(3) and (1) of the Act. The Union stated it would "rely on the General Counsel's brief in support of this exception." However, the General Counsel did not except to this finding or brief the issue. In any event, we agree with the Administrative Law Judge's finding.

[3] 395 U.S. 575 (1969).

[4] *Id.* at 614-615; *Jacques Syl Knitwear, Inc.; Biquette, Inc.*, 247 NLRB 1525 (1980).

[5] All dates are in 1979 unless otherwise indicated.

[6] See, e.g., *Multi-Medical Convalescent and Nursing Center of Towson*, 225 NLRB 429 (1976), enfd. 550 F.2d 974 (4th Cir. 1977) (union leader discharged; respondent interrogated employees, threatened them with discharge and engaged in surveillance of union activities).

[7] See *Pope Maintenance Corporation*, 228 NLRB 326 (1977), enfd. 573 F.2d 898 (5th Cir. 1978).

[8] See *Richard Tischler, Martin Bager and Donald Connelly, Sr., a limited partnership d/b/a Devon Gables Nursing Home, et al.*, 237 NLRB 775 (1978).

Union's organizational campaign began on April 27. Prior to that time, a Teamsters local had begun organizing Respondent's employees. The Teamsters local secured 88 authorization cards, but decided it could not continue its campaign. It then turned over the cards to Al Motley, an organizer for the Industrial Union Department (IUD), of the AFL-CIO. Starting at an April 27 meeting, Motley distributed new authorization cards and explained their meaning. Employees also passed out cards to other employees. The authorization cards stated, *inter alia*:

> I desire to be represented by a Union which is part of the AFL-CIO and I hereby designate the AFL-CIO and/or its appropriate affiliate as my Bargaining Agent in matters of wages, hours and other conditions of employment.

Motley informed employees at various meetings that either the ACTWU or the Rubber Workers would represent them. On May 14, the IUD sent a letter to Respondent stating, "the AFL-CIO and/or its appropriate affiliate" represented a majority of the employees and demanded bargaining. Respondent received this demand but never answered it, instead, it engaged in the unfair labor practices described above which were designed to negate the majority status of the Union.[9] On May 31 or June 1, soon after the IUD designated the ACTWU, Motley told a group of employees that the ACTWU had in fact been chosen to represent them.[10] A representation petition which had been filed by the AFL-CIO on May 15 was amended on June 4 to designate the ACTWU as the union to appear on the ballot. At no time after the designation of the ACTWU as their representative did employees seek to revoke previously signed authorization cards. As indicated previously the Union lost the representation election held July 20.

As stated above, we have determined that Respondent's pervasive unfair labor practices undermined the Union's majority status and impeded the possibility of a fair election. In such cases, "effectuating ascertainable employee free choice becomes as important a goal as deterring employer misbehavior."[11] The preferred method of determining employee desires is the election process itself. But where that process is unavailing because of employer misconduct, authorization cards may adequately reflect employee sentiment.[12] The question then becomes whether there is any reason to believe that the cards involved here do not satisfy such criteria.

The Board has had cause to analyze the use of cards which do not specifically designate the union seeking representation or a bargaining order. In *Breaker Confections, Inc.*,[13] a case remarkably similar to the instant one, the Board adopted a trial examiner's bargaining order where the union authorization cards used the same language that is disputed here. In that case, the respondent sought to invalidate cards because they did not specifically name the union. A trial examiner's analysis there is particularly appropriate to the instant case:

> [N]o attempt [at the hearing] was made to prove that the employees failed to grasp what was meant by the phrase "part of the AFL-CIO," or that they did not desire representation by a union which, like the instant Union, was "part of" the AFL-CIO. Absent any evidence that the card signers had had any experience with the instant Union or with any other union or that they had any reason to prefer one union over another,[28] there is no basis for rejecting a literal reading of the cards or for assuming that the cards do not reflect the true wishes of the signatories. Moreover, the Board has held that the designation of an international union is a sufficient designation of a local thereof,[29] and that a designation of the "CIO" is a sufficient authorization of an international union affiliated therewith.[30] It would seem to be a logical corollary of these holdings that a local of one of its international affiliates may be the beneficiary of a designation of the AFL-CIO, so that here the Union might properly have relied on the instant cards, even if they had contained no reference to an "affiliate" or "part" of the AFL-CIO, but had merely designated that federation, without more.
>
> Finally, it is admitted that on [the date after demand, Respondent's general manager] read to the employees the Union's letter identifying itself as the representative of the employees and requesting recognition. *While it may well be true that, as Respondent contends, this was the first notice the employees had that the Union was the beneficiary of the cards they had signed, there is no evidence or contention that any of them thereafter attempted to revoke his card.*

[9] As of May 14, the Union had secured at least 82 valid authorization cards from a unit complement of 151 employees. Respondent's unfair labor practice crusade actually began May 11.

[10] Although the Union was designated at this time, organizers continued to use the same authorization cards as before.

[11] *Gissel*, 395 U.S. at 614.

[12] *Id.* at 603.

[13] 163 NLRB 882 (1967). This case was not cited to the Administrative Law Judge by any of the parties.

Accordingly, it is found that the instant cards constituted a sufficient designation of the Union . . . . [163 NLRB at 887. Emphasis supplied.]

[28] Cf. *Nelson Chevrolet Company*, 156 NLRB 829.

[29] *A & D Trucking Co., Inc.*, 137 NLRB 915, 921, and cases there cited.

[30] *Dolores, Inc.*, 98 NRLB 550, 554; *Cummer-Graham Company*, 90 NLRB 722, 725 (fn. 8).

A bargaining order was an appropriate remedy in *Breaker Confections* because the respondent's unfair labor practices had precluded the possibility of a fair election and a majority of employees had indicated their desire to be represented. The instant case is even stronger than *Breaker Confections*, because here employees were always on notice of the identity of the affiliated union that might represent them. We conclude that the authorization cards here signed by a majority of Respondent's employees in the appropriate unit[14] establish the employees' desires.

Further, the facts presented here amply demonstrate employee sentiment in favor of union representation. There were 88 employees who signed cards designating a Teamsters local to represent them. When that union decided not to continue organizing, it brought the AFL-CIO and the employees together. In relatively short order, a majority of employees executed new authorization cards which explicitly indicated their desire for representation by the "AFL-CIO and/or its appropriate affiliates." Employees were apprised that either the ACTWU or another affiliate of the AFL-CIO would represent them and when the decision was made in favor of the ACTWU the representation petition was amended to designate the ACTWU.[15] Subsequently, no employee sought to revoke an authorization card.

In these circumstances, we find that a bargaining order in favor of the AFL-CIO-affiliated ACTWU is a proper and necessary remedy. The desire of the employees to be represented is clearly expressed in the plain wording of the authorization cards signed by a majority of the unit employees and not revoked after the ACTWU was formally designated as their representative. Given that Respondent's extensive unfair labor practices have precluded the holding of a fair election, its refusal to recognize the Union in such circumstances violated Section 8(a)(5) of the Act. And, we find that employee sentiment expressed through the authorization cards would be best protected by a bargaining order.[16]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Burlington Industries, Inc., Kernersville Finishing Plant, Kernersville, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(o) and reletter the subsequent paragraph accordingly:

"(o) Refusing to recognize and bargain with Amalgamated Clothing and Textile Workers

[14] The election was held in a unit of Respondent's production and maintenance employees, which Respondent admitted was an appropriate unit for collective-bargaining purposes.

[15] We note that the election procedure whereby the AFL-CIO designates one of its affiliates to appear on the ballot when the authorization cards supporting a showing of interest designated "the AFL-CIO and/or its appropriate affiliates" was approved by the Board in *O & T Warehousing Co., a Division of Bowline Corporation*, 240 NLRB 386 (1979). In that case, the Board did not permit "AFL-CIO and/or its appropriate affiliate" to appear on the ballot because such a designation delegated to the AFL-CIO selection rights *after* the election which the Board noted should be accorded employees *at* the election. Here, the Administrative Law Judge concluded that a bargaining order could not issue in favor of the Union in the instant case because the Union was not designated on the cards or prior to the demand for recognition and bargaining, nor were employees given any choice as to which affiliate would represent them. Accordingly, in his view the employees' right to select their representative had been impermissibly restricted. We do not agree. In *O & T Warehousing*, the issue of whether authorization cards such as those used here could form the basis of a bargaining order as a remedy for pervasive employer unfair labor practices was not considered. However, the Supreme Court stated in *Gissel* that ascertaining employee sentiment in such situations is of utmost importance and may be done from cards. We belive that it best effectuates the purposes of the Act to afford employees voting in an election the opportunity to vote on a *specifically* designated union as their representative. This opportunity to select a representative is no less a consideration in bargaining order cases. However, the means by which such a choice can be determined is obviously not the same as in the election situation since the ability to hold a free and fair election allegedly has been frustrated. The facts here amply demonstrate the desire of Respondent's employees to be represented by a union. Neither the AFL-CIO nor the Union deprived employees of a free and untrammeled choice in selecting a representative. Thus, union organizers repeatedly informed employees that one of two named affiliates would represent them and told them prior to the election that the Union had been designated. *B-P Custom Building Products, Inc.; and Thomas R. Beck, Mfg.*, 251 NLRB 1337 (1980), also discussed by the Administrative Law Judge in support of the contention that employees were not given a choice in selecting their representative as envisioned by the Act, is inapposite. In that case, the Teamsters and Paint Makers organized employees. A majority of the employees signed cards for the Paint Makers and one signed for the Teamsters. The Board, reversing the administrative law judge, issued a bargaining order to the Paint Makers, instead of to both unions as joint representatives, because those who executed cards for the Paint Makers were never told the Teamsters would represent them. Here, employees were told the Union or the Rubber Workers would be their representative and ultimately the Union was so designated and employees were informed of this. Although the cases are similar in that two unions are involved in each, they are distinguishable because employees in the instant case were informed of the identity of both unions which might possibly represent them.

[16] Recognition was requested on May 14, a date upon which majority status was attained. Respondent's unfair labor practices commenced on May 11. Thus, Respondent's bargaining obligation arose as of May 14. *Trading Post, Inc.*, 219 NLRB 298, 301 (1975); *Cas Walker's Cash Stores, Inc.*, 249 NLRB 316, fn. 3 (1980).

Union, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

> All production and maintenance employees at Respondent's Kernersville, North Carolina, finishing plant; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act."

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Upon request, bargain collectively and in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate bargaining unit and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate collective-bargaining unit is:

> All production and maintenance employees at Respondent's Kernersville, North Carolina, finishing plant; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act."

3. Delete part 3 of the recommended Order starting with "IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges:" in its entirety.

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT create the impression of surveillance of union activity by informing employees that they are being watched by management, or that management has a list of prounion employees, thereby restraining and coercing employees in the exercise of their Section 7 rights.

WE WILL NOT restrict the movement of employees within our plant to restrain and coerce them in the exercise of their Section 7 rights.

WE WILL NOT interrogate employees coercively with respect to their union and concerted activities.

WE WILL NOT solicit grievances to restrain employees from engaging in union activities.

WE WILL NOT threaten to discharge employees because of their union and concerted activities.

WE WILL NOT promise benefits to employees to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

WE WILL NOT threaten to close the plant if a union wins an election to restrain and coerce our employees in their selection of a bargaining representative.

WE WILL NOT threaten employees with harder work if a union wins an election.

WE WILL NOT engage in surveillance of employees by closely watching the activity of union supporters to restrain and coerce employees in the exercise of their Section 7 rights.

WE WILL NOT threaten that a lot of employees will be hurt if a union wins an election.

WE WILL NOT threaten employees with the loss of job opportunities in Forsyth County, North Carolina, in the event a union wins an election.

WE WILL NOT discharge or otherwise discriminate against our employees to discourage union activity.

WE WILL NOT refuse to recognize and bargain with Amalgamated Clothing and Textile Workers Union, AFL-CIO, as the exclusive representative of our employees in the unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Ralph Meadows immediate and full reinstatement to his former position, if available, or, if that position no longer exists, to a substantially equivalent position, with the wage rate he enjoyed at the time he was discharged, plus any increases, without prejudice to his seniority and other rights and privileges previously enjoyed, and WE WILL make him whole for all losses suffered by him as a result of our discrimination against him, with interest.

WE WILL rescind and remove from the personnel record of Ralph Meadows the disciplinary reprimand of May 14, 1979.

WE WILL, upon request, bargain collectively and in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate bargaining unit and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

> All production and maintenance employees at our Kernersville, North Carolina, finish-

ing plant; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

BURLINGTON INDUSTRIES, INC., KERNERSVILLE FINISHING PLANT

DECISION

STATEMENT OF CASE

ABRAHAM FRANK, Administrative Law Judge: The original charge in these consolidated cases was filed on May 30, 1979.[1] Thereafter, new charges and amended charges were filed on various dates to and including December 29. The original complaint, alleging violations of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, issued on June 29. Thereafter, an order consolidating cases and complaints issued on October 11, alleging additional violations, including a violation of Section 8(a)(5). On October 30 the Regional Director for Region 11 issued a supplemental decision in the representation case, resolving certain of the Petitioner's objections to the election, deferring others to a hearing before an administrative law judge, and consolidating the representation case with the unfair labor practice cases. A second order consolidating cases and complaints issued on January 11, 1980. At the close of the hearing the parties by stipulation moved to exclude from the complaint the allegation in section 8(i) thereof relating to Cecil Fields. The motion was granted. The hearing in this case was held at Winston-Salem, North Carolina, from February 19 to February 22, 1980, and from April 28 to April 30, 1980, the dates being inclusive. All briefs filed have been considered.

At issue in this case are questions whether Respondent discharged two employees and verbally counseled a third employee because of their union and concerted activities and otherwise engaged in various acts of interference, restraint, and coercion to thwart the Charging Party's organizational campaign. Also at issue are questions relating to the validity of authorization cards; whether a bargaining order is warranted under the doctrine of *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), and whether, in the alternative, the Petitioner's objections to the election should be sustained.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

Respondent, a Delaware corporation, is engaged in the business of operating a textile plant at Kernersville, North Carolina, the only facility involved in this proceeding, where it is engaged in finishing operations on rubber-related textile products. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] All dates are in 1979 unless otherwise noted.

II. THE LABOR ORGANIZATION

Amalgamated Clothing and Textile Workers Union, AFL-CIO, hereinafter the Union or ACTWU, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

A. *The Organizational Campaign*

The Union began its campaign at the Kernersville plant on April 27. Prior thereto a Teamsters local had obtained authorization cards from about 88 employees of Respondent. These cards were turned over to Al Motley, an organizer for the Industrial Union Department of the AFL-CIO. Beginning on April 27 Motley held several meetings with groups of between 54 and 60 employees at the Kernersville hall of Teamsters Local 391. Present at the first meeting were Lawrence Dillard, Ronald Dillard, Tony Dillard, Earl Johnson, Ralph Meadows, and other employees. Thereafter, further meetings were held by Motley on a weekly basis for about 4 months. During the course of these meetings Motley distributed authorization cards to the employees present and solicited their signatures. He told them to read the card and understand what it meant; that the card was not a "union" card, but a representation card that showed the Union's strength. It was a moral rather than a legal obligation. A certain percentage of the employees had to sign cards to get an election. The more people who voted in the election the stronger the Union would be. However, the employees would not incur a dues obligation to the Union by signing the cards. If the Union was selected, the employees would then sign another card to become a member of the Union.

The authorization cards distributed to the employees by Motley were headed: "AUTHORIZATION FOR REPRESENTATION BY AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS."

In smaller type the following paragraph appeared above the space for the employee's signature:

> I desire to be represented by a Union which is part of the AFL-CIO and I hereby designate the AFL-CIO and/or its appropriate affiliates as my Bargaining Agent in matters of wages, hours and other conditions of employment.

The same cards were distributed by employee-organizers to other employees. Employeees who signed cards were also requested by Motley and employee-organizers to sign a "Committee Sheet," authorizing the AFL-CIO and/or its appropriate affiliate to represent the employee in collective bargaining, to use the employee's name for the purpose of organizing the Kernersville plant, including sending his name to the Company and a copy to the National Labor Relations Board as well as in signing union leaflets. Most of the employees who signed cards signed the committee sheet.

Prior to May 31 at many meetings the employees discussed with Motley the question which union, in fact, would represent them in bargaining with Respondent.

Motley told them it would be either the Rubber Workers or the ACTWU.

On May 14 Harold McIver, organizational director for the Industrial Union Department, AFL-CIO, informed Respondent that the AFL-CIO and/or its appropriate affiliate represented a majority of Respondent's employees in a production and maintenance unit. McIver demanded bargaining upon proof of majority status through a neutral third party.

On May 31 or June 1 Motley held meetings with employees on all three shifts and informed them that the ACTWU had been selected to represent them in their best interest. On June 4 a petition for an election theretofore filed with the Board was amended to show the name of the Petitioner as the ACTWU.

The parties stipulated the names of 151 employees in the appropriate unit at the Kernersville plant on May 14. At the hearing 89 cards, naming the AFL-CIO and/or its appropriate affiliates as the employees' bargaining representative, were offered and received into evidence. Of these the names of three employees, Thomas E. Hines, Zenobia Robinson, and Willie Ann Melton, do not appear on the stipulated list of employees employed in the appropriate unit on May 14 and will not be counted in determining the Union's majority on that date.[2]

B. *The Discharge of Sylvia Bailey*

Bailey was employed by Respondent for about 6 months prior to her termination on August 27. She signed an authorization card, went to about six meetings, and spoke to eight or nine people about the Union. She also wore a union button 2 days before the election and on July 20, the election date.

According to Bailey, when she reported for work on a Monday in August, prior to her discharge the following Thursday, she was assigned to the hot slitter machine by a leadman, whom she identified as "K. C." During her break period at 6 p.m. she spoke to Roy Simmons, manager of the inspection department. Bailey told Simmons she did not want to do the job of operating the hot slitter. Simmons told her to do it just for that Monday. The hot slitter was not operating on Tuesday. On Wednesday when she reported for work K. C. again told her to operate the hot slitter. At 6 p.m., breaktime, she asked her supervisor, Carl Gilliam, for permission to use the phone. She made several telephone calls and finally asked Gilliam if she could go home because she was not feeling good. Gilliam said she could go home. At her request, Gilliam brought her lunch to the plant gate. She also gave Gilliam her key to a locker which she shared with another employee. The next day, Thursday, when she reported for work she was told by K. C. that Gilliam wanted to see her in Simmons' office. In the office Simmons asked what happened. Bailey said that Gilliam had said that she could go home. Gilliam denied giving her permission to go home and said that she had walked off the job without saying anything to him. Oran Sawyer, the personnel manager, was called to Simmons' office. He told Bailey to go home and they would let her know later if she still had a job. Subsequently, Bailey called the plant and was told it was best that they let her go because Gilliam had been a supervisor for a long time and they did not think he would lie. Her attention having been directed by counsel to August 20, Bailey identified that date, a Monday, as the first occasion when she was assigned to the hot slitter. Premised on that date, she worked on Tuesday, August 21, went home early on Wednesday, August 22, because she was ill,[3] reported for work on Thursday, August 23, and was sent home on that date for disciplinary reasons. However, the second amended charge, dated September 11, alleges that Bailey was discharged on August 28. The complaint alleges that she was discharged on August 27. Her termination slip in evidence lists the date of her termination as August 27. On August 22 Bailey was absent from work with permission because her baby was sick. Moreover, Zenobia Robinson testified that on or about August 27 she met Bailey in the restroom, that Bailey was crying and said she did not feel good and wanted to go home, and that Bailey did leave the plant early that day.

Although Simmons had signed Bailey's termination slip, he testified that he was not sure, but believed the incident occurred on Monday, August 20, that Bailey was not at work on Tuesday, August 21, and that Simmons talked to Bailey on Wednesday, August 22.

I conclude that both Bailey and Simmons were mistaken with respect to the above dates and I do not credit their testimony on this point.

Gilliam testified that on August 27 at or about 6 p.m. Bailey came to him and asked to use the telephone. Gilliam heard her make arrangements for someone to pick her up. Bailey then told Gilliam that she was going home. Gilliam asked Bailey what was wrong, was she sick. Bailey did not reply. She walked out the office door. Gilliam called out, "Sylvia, are you sick?" Bailey did not respond, but kept walking. Gilliam followed her, calling out her name. Bailey did not reply. At the side door Bailey asked Gilliam to bring her lunch. Gilliam did so and asked, "Sylvia, have you quit?" Bailey did not reply, but gave Gilliam her locker key.

[2] I leave unresolved the validity of cards signed by Susan Nichols and Ellsworth Jessup, G.C. Exhs. 54 and 57. Susan Nichols' name does not appear on the stipulated list. However, a Martha S. Nichols does appear on that list at the same address. Jessup testified at the hearing. He was employed by Respondent for over a year and had signed a card, G.C. Exh. 57. He gave his address as 1950 Kernersville Road, Kernersville. The name of Ellsworth Jessup does not appear on the list. However, the name of James E. Jessup, 1958 Kerner Road, Kernersville, North Carolina, does appear on the list. The similarity of names and addresses warrants a reservation as to the identity of the individuals involved.

[3] I credit Bailey's testimony, corroborated by Robinson, that Bailey was ill on the day she left work early after working on the hot slitter. Respondent raises a credibility issue with respect to Bailey's testimony that she visited a Dr. Harriston the next morning and that the doctor told her she had a bladder infection. Gail M. Moore, medical secretary to Dr. Harriston and custodian of his records since September 1979, testified that the records contain no mention of a visit by Sylvia Bailey or Sylvia Westmoreland, Bailey's maiden name, for the month of August 1979. Respondent argues that the nonoccurrence of a matter may be established by testimony of a custodian of business records even though the custodian was not employed in that capacity at the time of the making of the record. Assuming, without deciding, that Respondent correctly interprets applicable law, I find the testimony of Moore insufficient to discredit Bailey's testimony that she visited Dr. Harriston on the day in question. All business records, particularly those that may involve cash payments, have a margin of error. The records of doctors are no exception.

Supervisor Betty Marley corroborated Gilliam's testimony that Gilliam followed Bailey, asking what was wrong, was she sick, and that Bailey did not respond.

Gilliam testified further that the next day, August 2, at 3 p.m., before Bailey reported for work, Gilliam and Simmons discussed the incident of the previous day and Gilliam made the decision to consider Bailey's conduct a "voluntary quit." Simmons agreed. At 4 p.m, Bailey was called to the office. Bailey told Simmons she had asked Gilliam for permission to leave the previous day. Gilliam in Bailey's presence told Simmons that Bailey had not asked for permission to leave. Bailey was then told it had been decided that she was a voluntary quit and she left.

I credit Gilliam that Bailey left work early on Monday, August 27, and was terminated the next day, Tuesday, August 28, as of August 27. With respect to the critical credibility issue as to whether or not Bailey asked for and was given permission to leave on August 27, this matter is intertwined with Respondent's motive and is discussed below in my analysis and final conclusion.

C. *The Discharge of Ralph Meadows*

Meadows, employed by Respondent for more than 7 years, was discharged on May 17. As indicated above, he was an early and active supporter of the Union, having attended the initial meeting with Motley on April 27 at the Teamsters hall. Prior thereto Meadows had obtained about 20 authorization cards for the Teamsters. Meadows talked to employees at the plant and away from the plant. He told the employees that Respondent's grievance procedure was inadequate, that they did not have proper representation, and that they needed representation by a third party.

Meadows was a lead operator on the first shift in the production department under the immediate supervision of Sam Watson. He was assigned to the number 1 and 2 tenter frame machines. It was his job to prepare the machine for the operators, to set up the machines, and see to it that the machines were functioning properly and the operators were supplied with an adequate amount of material. If a machine needed repair, Meadows would write up a maintenance order and take it to the shop in the maintenance department. Although Meadows' duties required him to stay in the production department most of the time to check the quality of the material produced by the operators, on occasion he would have to bring material from the warehouse or rework cloth from the inspection department. To bring the rolls of cloth from the inspection department Meadows would use a forklift or walking lift.

On April 3 Meadows went to Watson's office and told Watson that Meadows needed to tell Watson something in the presence of a witness. Watson, who had just taken over the supervision of the first shift on April 1, accompanied Meadows to the inspection department. There Meadows stated in the presence of Christine Goolsby and Charles Morris that Meadows had signed a card for the Union and was trying to organize a union inside the plant. Watson reacted by saying that Watson had nothing to do with it.

On May 11 Meadows had a conversation with Watson in the latter's office. Watson told Meadows that management was watching Meadows because of Meadows' union activities and that Meadows was not to go into other departments during the course of his work unless required to do so because of his work duties. While I credit Meadows that Watson did, indeed, warn Meadows that he was being watched by management,[4] I find, in accordance with the testimony of Watson and Plant Manager Wallace Kale that, during part of the conversation, overheard by Kale from outside the office, Watson lectured Meadows about the quality of the work coming from the machines and suggested that Meadows do a better job. Kale entered the office at this point. Meadows said the machines were not set up properly, the maintenance was not good, and the lab technicians were not doing their job properly. Kale said he was doing everything he could to correct the mechanical problems with the machines, but that in the meantime all of them had a responsibility to do everything they could to see to it that the quality coming off the machines was the best possible. According to the testimony of Watson and Kale, whom I credit on this point, Meadows raised the question of the Union. Meadows said that blaming Meadows for the poor quality of work when the machines were in poor shape and falling apart was one reason the employees needed a union. Watson testified that Kale did not respond. Kale testified that he let Meadows talk and responded only in the manner set forth above. I do not credit the testimony of Watson and Kale that Kale at no time mentioned the Union during Kale's conversation with Meadows.[5] It is most likely, and I credit Meadows' testimony, that Kale asked Meadows if Meadows thought the Union could help more than management could help, why the employees needed a union, why they could not bring their grievances to Kale, and what changes Meadows thought could be made. Meadows suggested the removal of some supervisors and the institution of a credit union. At one point Kale said that any time there were bad apples or a bad group of people the bad people or troublemaking people had to be weeded out. Meadows asked if Kale was speaking about Meadows. Kale smiled.

On March 27, shortly after Kale assumed his duties as plant manager, he issued a memorandum entitled "Attitudes." The memorandum directed, *inter alia*, that newspapers, magazines, etc., should not be allowed in work areas; supervisors and floorpersons should not gather excessively in office areas; and visitation of employees with employees in another department should be stopped.

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[4] Watson and Meadows had been coworkers at the Kernersville plant for 6 and 7 years, respectively. They were on friendly terms.

[5] According to Kale, during the conversation Meadows raised his voice and began to rave, arguing that a union was needed at the plant. Kale is a forceful and affirmative individual. He was determined to improve efficiency at the plant and was opposed to the concept of a union for the employees. Faced with the challenge of an aggressive union advocate, such as Meadows, it would take a person of unusual self-restraint or lack of interest to refrain from responding in kind. Kale, in my opinion, does not fall into either category. I believe he did respond, essentially in the manner set forth herein.

Kale noted that the listed items had been going on for years and would be difficult to stop.

On Saturday, May 12, the number 2 tenter frame machine required repair. Meadows wrote up a maintenance order and carried it through the warehouse to the shop in the maintenance department. While there he got a cup of coffee. Carrying his cup of coffee, he returned to the production department through the inspection department, a somewhat shorter route to the number 1 and 2 machines.

In the inspection department Meadows either waved or spoke briefly to Christine Goolsby, who operated a machine for the purpose of inspecting and grading material. In the production department Meadows also spoke to Earlie Johnson, who operated the number 3 tenter frame.

Simmons observed Meadows walking through the inspection department. Simmons had previously complained to Watson and Watson's predecessor, Stewart Martin, about Meadows being in the inspection area. On this occasion Simmons attempted to contact Watson by telephone but failed to do so. Simmons came out of the inspection office and observed Meadows talking to Goolsby. Simmons was unable to find Watson in the production department, but did meet Plant Superintendent Cecil Fields. Simmons told Fields that Meadows was talking to employees in the inspection department and keeping them from doing their jobs. Fields said that he would take care of the matter.

Thereafter, Watson confronted Meadows with the charge that Meadows had been in the inspection department. Meadows acknowledged the charge, stating that it was the closest return route to the production department.

That Saturday or the following Monday Kale came to Simmons' office and asked for all the facts relating to Meadows' trip through the inspection department. Crunkleton learned of Meadows' conduct on Monday morning. Kale, Crunkleton, Fields, Simmons, Watson, and Sawyer met on Monday and discussed the incident at length. All of them were aware that Meadows had incurred three previous reprimands during the then-current 12-month period. A fourth reprimand would subject Meadows to discharge under Respondent's established personnel policy.

With the unanimous agreement of other management officials Kale decided that Meadows' offense in walking through the inspection department and distracting an employee warranted a written reprimand. That decision having been made, Meadows' discharge was automatic unless Kale elected to override company policy. He did not elect to do so.

On July 20, 1979, Meadows had received a written reprimand for tardiness. On December 11, 1978, Meadows was reprimanded for poor job performance. On February 9 he was reprimanded for leaving his work area and escorting another employee to the plant exit during his work shift. The reprimand of May 14, which resulted in his discharge, listed the following infraction of rules: (1) visiting an employee at frame number 3 instead of returning immediately to his own work area; (2) walking through an area (inspection department) that was not the customary or acceptable return route to Meadows' work area; and (3) carrying a cup of coffee through the inspection area contrary to the rules of that department.

On August 30, 1977, Meadows had also received a fourth reprimand within a 12-month period and was subject to discharge. On that occasion, however, the then-plant manager, J. F. Sloan, overriding the opinions of his subordinates, determined not to discharge Meadows because of his potential as an excellent leadperson.

During the first few years of his employment Meadows was given two savings bonds by Respondent to reward him for recruiting employees. For a short period of time he was a training instructor in the personnel department. Crunkleton testified that Meadows was actually a good employee who could perform his job when he wanted to perform it. It was for this reason that Respondent tolerated his occasional emotional outbursts of ranting, raving, and irrational behavior.

Meadows was absent on May 14, 15, and 16. On May 17 when he reported for work he was met in the downstairs lobby by Watson, Crunkleton, and Sawyer. Meadows was escorted to Sawyer's office. There Watson read the reprimand to Meadows. He was terminated the same day on the basis of four reprimands during the 12-month period.

D. *The Verbal Counseling of Benjamin F. Fulp, Jr.*

Fulp Jr. had been employed by Respondent for about 11 years. At times material to this case he was a pipefitter leadperson in the shop department under the supervision of Department Manager Bill Sibley. Fulp Jr. was one of the original card signers for the Union on April 27. He signed the committee sheet on the following day. He engaged in handbilling at the plant gate with Motley and other employees on about three occasions. On April 19, the day before the election, the Union distributed a handbill, reproducing two pictures of union supporters and the signatures of 75 employees, attesting to their support for the Union. The signature of Fulp Jr. is included on this handbill.

Fulp Jr. testified that on one occasion while handbilling at the plant gate he was observed by Sawyer, who denied seeing Fulp Jr. passing out union literature. I credit Fulp Jr., who impressed me with his forthright testimony under vigorous examination.

On July 19 Fulp Jr. was standing by his tool cart. Kale came by and Sibley appeared a few seconds later. Kale asked Fulp Jr. where his "Vote No" stickers were. Fulp Jr. said that he did not believe in that childish stuff, wearing a bunch of patches on his clothes. Kale said, "You know a lot of people in this plant look up to you. Why don't you put on some 'Vote No' stickers and talk to the people in the plant?" Fulp Jr. again said he did not believe in that childish stuff. Kale then said, "Where did this come from?" Someone had affixed a "Vote Yes" sticker on the rear of Fulp Jr.'s toolbox. Fulp Jr. said he had no idea how the sticker got there. Kale then said, "Why don't you put on some 'Vote No' stickers and talk to some of the people in the plant, and you help us and we will help you."

Kale's version of the conversation is directly contrary to that of Fulp Jr. Kale testified that he pointed to a "Vote No" sticker on Fulp Jr.'s tool cart and said, "Ben, I certainly appreciate your support for the Company." Fulp Jr. looked at the sticker and pulled it off. Fulp Jr. said, "I don't know who stuck that thing on my tool cart. I don't want to get involved in this mess. I've told my boys time and time again that ACTWU is a rinky-dink union and they shouldn't be involved in it."

I credit Fulp Jr. over Kale. Fulp Jr. is a proud man. Whatever his views on unionism or the ACTWU, I believe he would act consistently in word and deed. To credit Kale I would have to find that Fulp Jr. meanly derogated the ACTWU on the very day his highly visible signature appeared on a publicly distributed handbill attesting to his support for the Union. Moreover, in my opinion, Fulp Jr. is, indeed, the kind of man other employees respect and look to for leadership. It is believable that Kale recognized this quality in Fulp Jr. and sought his assistance the day before the election to influence other employees for the Company.[6]

On November 13 Fulp Jr. reported for work at 11 p.m. on the third shift as substitute mechanic leadman for that shift. He was immediately informed by Otis Rose, production supervisor on the second shift, that the pump on the number 3 tenter frame was not operating properly. The motor had burned out during the second shift. An air pump proved ineffective. At 11:30 Rose called Crunkleton for advice. Crunkleton suggested that they use an underground storage tank motor. At or about 1 a.m. Rose called James McGee, acting plant manager. Rose told McGee that the bolt hole patterns on other motors did not fit the base of the pump at the number 3 frame. McGee instructed Rose to remove the base and drill holes to fit the substitute motor. Fulp Jr. took over the phone and McGee repeated his instructions. Fulp Jr. said that he would probably need some help and McGee told Fulp Jr. to call whomever he needed. Fulp Jr. then called the chief mechanic, Darrell Lambert. According to Fulp Jr., he told Lambert that an electrician was needed. Lambert said, "One electrician is in Charlotte in school and the other one stayed here until 9 o'clock at night. I don't know what you are going to do."[7] Fulp Jr. said, "Okay," and hung up the phone. Fulp Jr. then turned to Rose and said, "Otis, we need an electrician." Rose said, "You can change that electric motor." Fulp Jr. said, "I am not going to fool with the electric motor. There are 2 inches of water in that hole out there. I don't know when the power is off or on. I am not an electrician. I am not going in that hole and be electrocuted. I tell you what you do. You change the wires and I will move the motor because I am not an electrician." Rose said, "I am not either. I am going home."

The motor was repaired on the first shift in the morning by Lambert and an electrician, who observed Lambert as he disconnected the wires and replaced one wire that was misplaced.

On Friday morning, November 16, Sibley told Fulp Jr. that Sibley was going to write up Fulp Jr. on oral counseling because Fulp Jr. did not change the motor. The next day, Saturday, November 17, Sibley called Fulp Jr. into Sibley's office and read the oral counseling statement. Fulp Jr. refused to sign it and asked to see Kale.

Fulp Jr. saw Kale on the following Monday. In his meeting with Kale, as in his meeting with Sibley, Fulp Jr. noted that the Company had refused to send him to electrical school and pay the entire cost although the Company had paid the entire cost for other employees. Fulp Jr. suggested that the Company was discriminating against him.

Kale investigated the incident. He spoke to all the supervisors involved and separately with Fulp Jr. and Sibley. The matter was also discussed in a meeting with Kale, Fulp Jr., Sibley, Lambert, and McGee. Finally, Kale told Fulp Jr. the oral counseling was going to stand.

Verbal counseling appears on a company form entitled "Record for Commendation, Verbal Counseling, or Reprimand." As stated in Respondent's "Supervisors' Manual," counseling is a nondisciplinary personnel procedure, designed to improve the thinking, skills, and abilities of employees. The counseling administered to Fulp Jr. by Sibley on November 16 states that Fulp Jr. had made no attempt to remove either the motor from the high tack pump or the damaged motor, that Fulp Jr. was intelligent enough to throw the power off and label the wires with tape and disconnect them. Kale testified that he did not expect Fulp Jr. to perform electrical work, but that Fulp Jr. had full responsibility, as the off-shift leadperson, to call in electricians or people who knew how to change the motor. Fulp Jr. could also have removed the base plate and drilled holes to accommodate the substitute motor without disconnecting wires.

Although Kale informed Fulp Jr. that the verbal counseling did not mean anything, Fulp Jr. considered it a black mark on his record.

E. *Other Independent Interference, Restraint, and Coercion*

1. By Inspection Supervisor Ralph Porter

Three employees testified as to statements by Porter.

[6] Fulp Jr.'s son, four stepsons, and a nephew were all employed at Respondent's plant at the time of the election.

[7] Lambert testified that Fulp Jr. called Lambert between 11:30 p.m. and 1 a.m. after Lambert had retired for the night. According to Lambert, Fulp Jr. said that he and Rose had been unable to find a motor in the supply room and they were going to call McGee and that Fulp Jr. would get back to Lambert if Fulp Jr. came up with anything. Lambert denied that Fulp Jr. had mentioned anything about needing an electrician. Lambert also denied that he had said that one electrician was in Charlotte and the other had stayed until 9 p.m. and would not come back. Rose testified that he did not hear Fulp Jr. ask for an electrician. I credit Fulp Jr. The situation in which Rose and Fulp Jr. found themselves was clearly an emergency. They spoke to Crunkleton and McGee and both offered advice and instructions. Fulp Jr. told McGee that Fulp Jr. needed help. Lambert's testimony that Fulp Jr. called at that late hour merely to report that he and Rose could not find the right motor makes no sense. The record is clear that Fulp Jr. himself would not perform electrical work for the Company, particularly in view of the Company's position that he was not entitled to full compensation for a course in electrical work. It is most likely that Fulp Jr., as he testified, told Lambert flatly that an electrician was needed and that Lambert said none was available. I so find.

Sandra Stewart, who worked under Porter's supervision, testified that she and Porter talked every night for the 2-week period prior to the election of July 20. Most of their conversation was about the Union. Initially, Porter asked Stewart which way she was voting and then said, "Well, you don't have to answer that, but just remember if the Union gets in here there will be a lot of people fired." From then on Stewart told Porter that she was for the Company, that he did not have to worry about her.

During this period Porter asked Stewart what she knew about the Union. He told her that the plant would shut down automatically if the Union was voted in and there was nothing the Union could do about it legally. Porter also told Steward that the people who voted for the Union would not have jobs after the voting because Roy Simmons had a list of names in his office of people who were for the Union. Porter assured Stewart that Porter would see to it that all of the people on his shift who voted for the Company would have jobs.

About two nights before the election Stewart observed a leadman, identified as "Sam," talking to Macon Tillman. Stewart asked Porter what they were arguing about. Porter said that he could not talk to Tillman, but he sent Sam to talk some sense into Tillman and Deborah Nichols about the Union because if they voted for the Union they would be out of a job and Nichols, being pregnant, should be more concerned about the welfare of her baby because the Union would not help support it if she did not have a job.

During the week of the election in the front office Porter told Stewart that the employees had had no choice in selecting the Union and that another plant had closed because of the Union. He said that Burlington would do the same thing. They could close the plant. Burlington could relocate, return to its former location, or close the plant down for a number of years, and then reopen it under another name. On another occasion during this period in the presence of other employees, including Gwen Peachtree, Porter again said that the Company would close down if the Union was voted in. Peachtree argued that the Company could not close. Porter said if the Company all of a sudden began to lose a lot of business or contracts they could say that they were losing business or money and close their plant and there was nothing the Union could do about it.

About 2 days before the election Stewart wore a union T-shirt. Porter asked her what she was doing with a union T-shirt, that he thought she was for the Company. Stewart replied that they were handing T-shirts out and she took one "to get them off my back."

On the day of the election Supervisor Crockett stopped Stewart as she was on her way to the restroom. Crockett said he had heard Stewart was wearing a Union T-shirt because people were harassing her. Crockett said that people did not realize that Burlington was the one that helped pay their bills and fed their kids and that the Union could do nothing for the employees if Burlington did not want to do it. The plant would close down and that it was perfectly legal and there was nothing that could be done about it. Porter said, "That's right. I told Sandra that, that they could close down. There wasn't nothing that they could do about it."

In his testimony Porter categorically denied that he had made the statements attributed to him by Stewart. According to Porter, he told the employees to read the bulletin board, to vote the way they wanted to vote, but that Burlington would appreciate their vote. I do not believe him. Stewart's testimony rings true, particularly that portion which attributes to Porter the antiunion argument that the Company could close its plant if it was losing business or money. Stewart is a rank-and-file employee. It is most unlikely that she would be sufficiently versed in labor law to fabricate this bit of testimony. Porter, on the other hand, had attended management meetings and was briefed, at least to some extent, on management rights and obligations with respect to unions. Crockett, too, denied saying that the Company would close down and there was nothing that could be done about it. For the same reasons I credit Stewart over Crockett.

Deborah Nichols, a former employee, worked under the supervision of Porter during the Union's campaign. She signed a card for the Union on April 28 and at or about that time she told Porter that she was going to vote for the Union.

On July 18 Porter came to Nichols' machine and in the presence of Stewart said, "Do you want to shake my hand? It's been nice knowing you."

Porter denied making the above statement. Having discredited Porter above, I credit Nichols.

Macon Tillman, employed by Respondent at the time of the hearing, testified that on or about July 17 Porter came to Tillman's work station and in a brief conversation told Tillman that if the Union came in the employees would work harder, that the Company would not negotiate, and that the plant would close. Porter denied making these statements. I have above credited Stewart that Porter made similar statements to her. Accordingly, I credit Tillman over Porter.

2. By Supervisor C. D. Crawford

Evon E. McClure, an active union organizer, signed up other employees, wore a union T-shirt, and distributed leaflets for the Union at the plant gate. McClure was employed in the supply room under the supervision of Crawford. McClure testified that about May he informed Crawford that McClure was an active union supporter and had signed a union card.[8] McClure worked on the second shift. No supervisor for the maintenance department was present during that shift. Prior to May 15 McClure worked without supervision and was free to take his breaks at his own discretion. On that date McClure was verbally counseled for overstaying his rest break. Crawford instructed McClure that thereafter McClure would have regular break periods at 6:30, 8:30, and 10:30 p.m. McClure was also placed under the supervision of Betty Marley, the second-shift supervisor in the inspec-

[8] Crawford denied that McClure had volunteered this information. I find it unnecessary to resolve this issue inasmuch as Crawford conceded that he assumed McClure was a union supporter because McClure associated with other union supporters.

tion department. Several other employees in the service department, which includes the shop, the warehouse, and the lab, were also affected by the change in policy. Pursuant to a management decision it was determined that employees on the second and third shifts in the service department should be placed under a supervisor, who would be available to talk to them and check on their performance.

3. By Supervisor Samuel Watson

As set forth above, I have credited *Meadows* that Watson on May 11 warned Meadows that he was being watched by management because of Meadows' union activities. On that occasion Watson spoke to Meadows and Benjamin F. Fulp III, Watson's leadpersons, about going to other departments, including the inspection department. Watson directed the two leadman not to go to other departments unless it was work related. In his testimony Meadows explained that, while he and other employees had previously been permitted to walk through other departments, it was not company policy to permit employees to stop and talk to the employees in other departments.

Earlie Johnson testified that on May 11 Watson told Johnson to leave his working area because Watson's supervisor had told Watson to start checking on employees leaving their working area. About 4 or 5 months prior to May 11 Johnson had been given the same instruction by Supervisor Stewart Martin.

Fulp III testified that on July 20, after he had voted, Watson came to Fulp III and told him that Fulp III was going to have to stay on his machine, that Watson was going to stay so close to Fulp III that Watson was going to crawl in the back of Fulp III's T-shirt with Fulp III. Fulp III was wearing a union T-shirt with a union emblem on it. Earlie Johnson testified that Watson followed Fulp III for the entire day on July 20 and on one occasion when Fulp III asked to go to the bathroom Watson said, "I'm going with you."

Fulp III also testified that in April or May when the Union began handbilling at the gate he was told by Watson that Fulp III was going to have to quit bickering and arguing with everybody about the Union.

Watson denied the statements attributed to him and denied following Fulp III closely on July 20.

I have above credited Meadows over Watson and I credit Fulp III, corroborated in part by Johnson, over Watson in this instance. Fulp III, a gregarious person, was a known active union adherent (his picture appears on the handbill distributed by the Union on July 19), the type of individual who could be expected to urge other employees to vote for the Union on election day. I am satisfied that Watson was determined to keep Fulp III on the job and away from other employees as much as possible on July 20.

4. By Supervisor Lacy Testerman

Deborah Nichols testified that on July 16 or 17 in the Inspector's office Testerman said that if the Union got in there would be no more coffee machines because the Company could not afford them and that the employees would be making less money. Both Testerman and Nichols testified briefly. Testerman denied making the above statements and denied having had any conversation with Nichols other than a casual greeting at the change in shifts. Testerman added that the coffeemaker in the inspector's office had not been used for a year or a year and a half prior to the election. Coffeemakers, however, were used in other shops at the plant. Nichols testified directly and affirmatively that Testerman had made the above statements. I do not believe that Nichols would fabricate this testimony out of whole cloth. As against Testerman's testimony that he had no conversation at all with Nichols, I credit Nichols that the above conversation occurred as she testified.

5. By Supervisors William Crockett and William Marr

Sandra Stewart credibly testified to statements by Crockett as set forth in section 5(a) above.

Edgar Wayne Bryant, employed by Respondent for 11 years and still employed at the time of the hearing, testified that he was on friendly terms with Supervisors Crockett and Bill Marr and frequently joked and kidded with them. On July 16 Bryant was walking to the warehouse at or about 7:15 a.m. Bryant, Crockett, and Marr were talking about the previous night's ball games. Crockett made a comment, "Wayne, the Union is going to brainwash you." Bryant smiled and turned to leave. He had a "Vote Yes" sticker on his jacket. Marr said, "Hey, Billie, look what he has got on his back. Boy, don't you know that would be grounds for me to dismiss him." Bryant said, "Ain't that a shame," and walked on. Crockett and Marr denied having made these statements. I credit Bryant who, though nervous at the hearing, impressed me. I also take into consideration the fact that he was currently employed by Respondent and was a longtime employee.

6. By Supervisor Dennis Pike

Margaret Peterson, employed by Respondent for 12 years and a leadperson at the time of hearing, testified that on July 20 she took some shelves from the show racks to the supply room in the course of her normal duties. She was wearing a union button. When she returned to the inspection department Pike, her supervisor, asked, "Where have you been?" Peterson told him what she had been doing. Pike then said, "Well, don't leave the department again without notifying me or Roy." Peterson had never before been restricted in her movements in this fashion. Pike denied having made the statement to Peterson. I credit Peterson. She is, in my opinion, one of the most sincere and truthful witnesses to appear before me.[9]

[9] I make this judgment despite the inconsistency between her testimony and that of Tony Dillard, who asked her to sign a union card, told her it was for union representation and her affidavit which states that he told her the sole purpose of the card was for an election. The issue is considered below in the discussion of the validity of cards.

7. By Department Manager Roy Simmons

Timothy Jones had been employed by Respondent for about a year and was employed in April and May, but was not employed at the time of the hearing. He testified that on July 20 he observed Simmons standing by Nancy Fulp's machine from 30 minutes to 2 hours. Jones also testified initially that he heard Simmons say to Nancy Fulp, "You wait until Monday. Then my name is going to be Roy SOB Simmons. I am going to be Roy SOB Simmons." On cross-examination Jones changed his testimony and testified that Simmons said to Lacy Testerman, a supervisor, "You wait until Monday. My name will be Roy SOB Simmons." Simmons and Testerman denied that Simmons had made such a statement. Nancy Fulp was not asked and did not testify as to this statement by Simmons. While I find that Jones did hear a statement by Simmons to that effect, the context in which the statement was made is unclear, except that it was made by one supervisor to another.

Nancy Fulp testified that on July 20 she had some union pamphlets lying under her desk. Simmons approached and told her to place the union literature in her locker. Simmons, according to his testimony, also removed several "Vote Yes" decals from her machine. Nancy Fulp also testified that on this occasion Simmons stayed at her machine for about 2-1/2 hours. Simmons testified that he remained at Nancy Fulp's machine for about 15 or 20 minutes watching her grade a roll of cloth, his normal practice.

In view of Jones' testimony that Simmons may have stayed at Nancy Fulp's machine no more than 30 minutes and Nancy Fulp's unimpressive testimony, including contradictions, I credit Simmons that he did not remain at her machine for more than 15 or 20 minutes on this occasion.

8. By Production Manager Wayne Crunkleton

Benjamin Fulp III testified that on July 18 he and several other employees were talking about company profits. Crunkleton joined the conversation and said something to the effect, "If the Union got in, a lot of people would be hurt; if the Union lost then a few people would be hurt." Fulp III testified further that on July 20 he and Crunkleton were talking about the election. Crunkleton said that he was not really an antiunion man, but the Union would do the employees no good because the State was a right-to-work-law State; that the employees might as well look for another job if they lost the election, but not to look for one in Forsyth County (the county in which the Kernersville plant is located) because the election had put a scar so deep between Burlington and its people that it would never be healed. Fulp III also testified that he overheard a conversation between Hattie Jeter and Crunkleton on August 6 in which Crunkleton told Jeter she could get her pocketbook and leave because of her treatment of management. Fulp III held up a Government pen and said, "Wayne, I don't know about anybody else, but this is who I have got backing me now." Crunkleton replied, "Bill, let me tell you something, Burlington, if they wanted to, they could fire everybody in this plant and shut it down and there isn't a damn thing that the Federal Government can do about it." In her testimony Jeter confirmed her affidavit to the effect that Crunkleton had said Burlington could fire employees for any number of reprimands and as long as it was done on an equal basis there was nothing the Federal Government could do about it. On August 29 or 30 Fulp III had a conversation with Crunkleton after the latter had just returned from a meeting. Fulp III said, "Crunk, you are having a lot of meetings now, aren't you?" Crunkleton replied, "Well, yes, we have got to find some way to get rid of you-all." Crunkleton made this comment on several occasions both before and after the election, but in a joking manner.

Crunkleton denied threatening to fire Fulp III because of his union activities and denied other statements attributed to Crunkleton by Fulp III. With respect to the incident involving Jeter, Crunkleton testified that he told Fulp III that Burlington could fire anyone in the plant if they broke company rules and there was no government law that dictated what Burlington could do as long as Burlington enforced its rules fair and equal to everyone.

I credit Fulp III over Crunkleton. Crunkleton testified that they had been very close over the years, had eaten in each other's homes, played softball together, and were very good friends. Surely, between such close friends, one strongly for and the other strongly against the unionization of the plant, there must have been some mention of the Union pro and con, during the months of the heated union campaign. I cannot believe that Crunkleton's lips were sealed during this entire period and that only once did he respond mildy to Fulp III's boast of Government protection. I find that Crunkleton did say to Jeter and Fulp III that Burlington could fire employees for any number of reprimands as long as it was done on an equal basis. However, I also find that Crunkleton, in addition, used stronger language, as Fulp III testified, in emphasizing Crunkleton's view that Burlington had a right to run its business or close the plant, as it pleased, and there was nothing the Federal Government could do about it.

9. By Plant Manager Wallace Kale

Clarence Clark, employed by Respondent for 8-1/2 years and employed at the time of the hearing, testified that he attended a meeting for the employees in the inspection department in the conference room on July 17. About 25 to 30 employees were present. Slides were shown of a union drive at another plant, including a slide of a pregnant woman who was kicked and a man who was hit with a brick. Clark made the comment that the man was hit with a "street apple." The employees laughed. Kale said that he did not see anything funny about a pregnant woman getting kicked in the stomach; that the employees could laugh all the way to the voting booth on Friday, if they wanted to, but if the Union was to get in, they would shut the plant down, and believe you me, they would.

Earlie Johnson, employed by Respondent for 7 years at the time of the hearing, testified that on July 17 he attended a meeting for employees in the shop and produc-

tion department. About 22 employees were present. A film or slides were shown about a union demonstration in the early forties or fifties. Johnson recalled that he asked Kale what would happen if the Union won the election. Kale said something about the plant closing. Kale made the same comment at several other meetings attended by Johnson before the election. Johnson did not recall Kale's exact words, but did recall Kale saying something to the effect that the plant could close if business was down or the Company could transfer its business elsewhere.

Macon J. Tillman testified that he attended a meeting before the election at which a film was shown about picketing and violence when a union came into a plant. Kale was present and told the employees they did not need a union. Kale said he needed time to show the employees what he could do, that they were "one big happy family." Tillman was not sure of other statements made by Kale, but did remember Kale saying, "We can and we will close the plant."

Tony Dillard, employed by Respondent for 4-1/2 years and employed at the time of the hearing, testified that he attended a meeting several days before the election at which a movie and slides were shown about union violence. Kale said that he felt they were all family and he did not think that they wanted that type of violence. Dillard corroborated Clark's testimony that Kale reacted to the employees' laughter about a "street apple" by stating that the employees could laugh all the way to the voting booth but, if the Union came in, "We can and we will close the plant." Dillard did not include this testimony in his affidavit to the Board and denied discussing it with counsel prior to his testimony in this case.

In his testimony Kale conceded telling the employees that they did not need a union, but flatly denied other statements, including the threat to close the plant, attributed to him by witnesses for the General Counsel. He was corroborated as to the July 17 meeting by Roby Rycroft, an employee in the inspection department, Vinnie Prinnix, employed in the inspection department for 9 years, and Ruth Smith, a training manager in the personnel department.

According to Kale, responding to the catcalls and laughter at the meeting of July 17, he told the employees he did not see anything funny about a pregnant woman getting kicked in the stomach or a man getting hit over the head with a brick, that they could laugh all they wanted to, all the way to the voting booth Friday, that the Company has every legal right in case of economic strike, to permanently replace economic strikers "and we would." Prinnix and Rycroft also testified that Kale said the employees could come back after the strike if there was an opening for them, but that Respondent would not fire the replacements to take the strikers back.

As indicated above, Kale impressed me as a strong and competent business man. He would be quick to respond to a business problem and alert to any challenge to his authority. Witnesses for Respondent testified that Kale was upset and angry at the July 17 meeting when the employees laughed at Clark's comment about a "street apple." Kale's own testimony indicates that he responded in some heat. The critical question is whether in the heat of his anger he threatened to close the plant or merely informed the employees of Respondent's legal right to replace economic strikers. So far as the record shows, there was no discussion of a strike by Respondent's employees; no strike was imminent; no employee was in danger of being replaced. In these circumstances Kale's reminder that Respondent could replace economic strikers would make little impression on them. They could still laugh all the way to the voting booth and nothing would happen to them if the Union won the election. That some day in the future there might be a strike, that they might join the strike, and be replaced was highly speculative and too remote to have an immediate impact on them. My assessment of Kale is that in an angry mood he would not let the laughing employees off so lightly. He would say something to stop them from laughing. I am aware of the weaknesses in the testimony of Tillman and Dillard, which counsel for Respondent have pointed out to me in their excellent brief.[10] Nevertheless, three of the four witnesses who testified for the General Counsel had been employed by Respondent from 4-1/2 to 8-1/2 years and were employed at the time of the hearing. Viewing the matter as realistically as possible, I conclude that Kale gave the employees something to really think about as they went to the voting booth on Friday. I credit Clark, corroborated by other witnesses, that Kale threatened to close the plant on July 17 if the Union won the election.

IV. ANALYSIS AND FINAL CONCLUSIONS OF LAW

A. *Interference, Restraint, and Coercion*

I conclude that Respondent violated Section 8(a)(1) of the Act by the following conduct:

1. Supervisor Sam Watson's statement to Ralph Meadows on May 11 that Meadows was being watched by management because of Meadows' union activities, thereby creating the impression of unlawful surveillance.

2. Supervisor Watson's restriction of Meadows and Benjamin Fulp III, both leadpersons, on May 11 from entering other departments unless it was work related. Although Meadows conceded that Company policy forbade socializing with employees in other departments, both Meadows and Fulp III testified that they had not previously been forbidden to enter other departments in the course of their duties as leadpersons. Nor does Kale's memo of March 27 forbid such conduct. The memo merely directs supervisors to restrict employees from *visiting employees* in other departments, pointing out that even such conduct had been going on for years and would be difficult to stop. I conclude that Meadows and Fulp III were forbidden to enter other departments to minimize their Union-related contact with other employees, thereby discriminatorily restricting the movements

[10] Tillman testified that he was keeping his union activities under cover whereas, in fact, he was a known union supporter. Tillman also contradicted himself with respect to his wearing of a union T-shirt on July 18. Dillard testified that he saw a movie and slides on July 17 whereas apparently only slides were shown. Also Dillard's affidavit does not mention Kale's threat to close the plant. Dillard denied that he had discussed the matter with counsel for the Charging Party, who examined Dillard on that point.

of Meadows and Fulp III within the plant for the purpose of restraining their union activities. Such conduct violates Section 8(a)(1) of the Act.

3. Plant Manager Kale's interrogation of Meadows on May 11 in Watson's office as to whether Meadows thought the Union could help the employees more than management, why the employees needed a union, why they could not bring their grievances to Kale, and what changes Meadows thought could be made without a union, thereby interrogating employees concerning their union activity and soliciting grievances in lieu thereof.

4. Kale's implied threat to Meadows on the same date that union supporters, such as Meadows, were "bad apples" that had to be weeded out, thereby suggesting that Respondent would discharge Meadows and other union supporters.

5. Kale's suggestion to Benjamin Fulp, Jr., on July 19 that Fulp Jr. help the Company by persuading other employees to vote no in the election, coupled with Kale's promise of benefit to Fulp Jr. for such assistance to the Company.

6. Supervisor Porter's interrogation of Sandra Stewart during the 2-week period prior to the election of July 20 as to how she was voting coupled with his threat that a lot of people would be fired if the Union got in.

7. Supervisor Porter's interrogation of Stewart during this period as to what she knew about the Union coupled with the threat that the plant would shut down automatically if the Union was voted in.

8. Supervisor Porter's threat to Stewart during this period that the people who voted for the Union would not have jobs after the voting coupled with the statement that Department Manager Roy Simmons had a list of names in his office of people who were for the Union, thereby threatening to discharge employees because of their union sympathy and support and creating the impression of surveillance.

9. Supervisor Porter's promise of benefit to Stewart during this period to the effect that Porter would see to it that all of the people on his shift who voted for the Company would have jobs.

10. Supervisor Porter's threat to Stewart about 2 days before the election that employees Macon Tillman and Deborah Nichols would be out of a job if they voted for the Union.

11. Supervisor Porter's threat to Stewart during the week of the election that another plant had closed because of the Union and Burlington would do the same thing or relocate, return to its former location, or close the plant down for a number of years and then reopen under another name.

12. Supervisor Porter's threat during this period to employee Gwen Peachtree in the presence of Stewart and other employees that if the Company was losing business the Company could say that they were losing business or money and close the plant and there was nothing the Union could do about it, thereby suggesting that the Company lawfully could close down the plant to avoid the unionization of its employees if a defense of economic motivation existed. While economic motivation is, of course, a defense to charges of unfair labor practices, the clear implication of Porter's argument is that Respondent would use that defense as an excuse rather than the real reason for closing the plant, the real reason being the union activities of its employees. Such conduct violates Section 8(a)(1) of the Act.

13. Supervisor Porter's interrogation of Stewart about 2 days before the election as to why she was wearing a union T-shirt.

14. Supervisor Crockett's statement to Stewart on the day of the election and Supervisor Porter's affirmation of Crockett's statement that the Union could do nothing for the employees if Burlington did not want to do it; that the plant would close down; that it was perfectly legal and there was nothing that could be done about it, thereby suggesting that the Company could close its plant with impunity to avoid the unionization of its employees.

15. Supervisor Porter's statement to employee Deborah Nichols on July 18, "Do you want to shake my hand? It's been nice knowing you." In the context of Porter's knowledge of Nichols' support for the Union Porter's comment was an implied threat that Nichols would be discharged for that reason.

16. Supervisor Porter's threat to employee Macon Tillman on or about July 17 that if the Union came in the employees would work harder, the Company would not negotiate, and the plant would close.

17. Supervisor Watson's restriction of Benjamin Fulp III's activities on July 20 by requiring Fulp III to stay at his machine and by following Fulp III closely during the working day. Fulp III had never previously been so confined or watched. By such conduct Watson discriminatorily restricted Fulp III's union activities and engaged in unlawful surveillance of Fulp III in his union-related contacts with other employees in violation of Section 8(a)(1) of the Act.

18. Supervisor Watson's direction to Fulp III in April or May to quit bickering and arguing with everybody about the Union. While Respondent, of course, has a right to require its employees to work rather than talk or argue on time intended for work, Watson's direction to Fulp III was broad enough to forbid him from engaging in discussions with other employees about the Union on Fulp's own time and in nonworking areas. Such a prohibition restrains employees from engaging in protected solicitation of other employees on behalf of the Union in violation of Section 8(a)(1).

19. Supervisor Lacy Testerman's threat to employee Deborah Nichols on July 16 or 17 that if the Union came in there would be no more coffee machines and the employees would be making less money.

20. Supervisor William Marr's comment to Supervisor Crockett on July 16 in the presence of employee Edgar Wayne Bryant that a "Vote Yes" sticker on Bryant's jacket would be grounds for Marr to discharge Bryant. Even assuming the remark was made in jest among old friends, the threat by a supervisor with the power to carry out his threat to discharge an employee because of his support for a union is not a laughing matter. The joke thinly veils the reminder of Respondent's power and inclination to discharge employees because of their union activity. Such conduct violates Section 8(a)(1) of the Act.

21. Supervisor Dennis Pike's restriction of employee Margaret Peterson, who was wearing a union button, to the inspection department on July 20 unless she notified Pike or Department Manager Roy Simmons. Peterson had never before been so restricted. I find that Pike's restriction of Peterson was due to her advertised support for the Union. Respondent thereby discriminatorily restricted Peterson's normal movements within the plant because of her support for and activities on behalf of the Union in violation of Section 8(a)(1) of the Act.

22. Production Manager Wayne Crunkleton's threat on July 1 to Benjamin Fulp III that if the Union got in a lot of people would be hurt.

23. Production Manger Crunkleton's threat to Fulp III on July 20 that the employees should look for another job if they lost the election, but not to look for one in Forsyth County; that the scar between Burlington and its employees caused by the election would never be healed, thereby threatening to discharge employees because of their union activity if they lost the election and threatening them with a loss of job opportunities in Forsyth County because of Respondent's anger as a result of the Board election.

24. Production Manager Crunkleton's threat to Fulp III on August 6 that Respondent could fire everybody in the plant and shut it down and the Federal Government could do nothing about it in response to Fulp III's suggestion by holding a government pen that he was supported in his concerted and union activities by the Federal Government, thereby threatening that Respondent would close its plant, if it so desired, with impunity regardless if its obligations under the National Labor Relations Act.

25. Production Manager Crunkleton's threat to Fulp III on August 29 or 30 and on several other occasions before and after the election that management was trying to find some way to get rid of Fulp III. As indicated above, Fulp III and Crunkleton were close friends and Crunkleton's comment was made in a joking manner. Nevertheless, a threat to discharge a union supporter is not defensible because it was made in jest. It may be funny to the supervisor, but it is not funny to the employee, particularly where, as here, his employer is strongly antiunion and determined to oppose the unionization of the plant.

26. Plant Manager Wallace Kale's threat at a meeting of employees on July 17 that Respondent would shut the plant down if the Union won the election.

I conclude that Respondent did not violate Section 8(a)(1) of the Act by the following conduct:

1. Supervisor Watson's direction to Johnson on May 11 not to leave his working area because Watson had been told by his superior to start checking on people leaving their working area. Johnson testified that his sole union activity consisted of signing a card for the Union and that he had received the same instruction about 4 or 5 months previously from Supervisor Stewart Martin. In these circumstances I conclude that Watson's instruction to Johnson constituted nothing more than routine business practice and was unrelated to Johnson's union activity.

2. Supervisor Crawford's rescheduling break periods for supply clerk Evon E. McClure and placing McClure under the supervision of a supervisor in the inspection department. The record shows that McClure's job on the second shift was newly created in January. Crawford was informed that McClure had overstayed his break in May. McClure was verbally counseled and the above changes were made in his working conditions. Other employees in the service department on the second and third shifts, theretofore not supervised, were also placed under supervision at the time. Although McClure was an active union organizer, Respondent has adduced evidence that the charges made in his working conditions were nondiscriminatory and in accordance with normal, efficient business practice. Accordingly, I find no violation of the law with respect to McClure.

3. Supervisor Crockett's comment to Edgar Wayne Bryant on July 16 that the Union was going to brainwash Bryant. The statement of Crockett is neither a threat nor a promise of benefit. It appears to be nothing more than Crockett's opinion that Bryant was being misled by the Union's propaganda. As such, the statement is protected free speech.

4. Supervisor Simmons' statement to Supervisor Lacy Testerman on July 20, overheard by employee Jones, that Simmons' name on Monday would be "Roy SOB Simmons." As indicated above, the context in which the statement was made is not clear. Apparently it was made in Nancy Fulp's presence, but she did not testify that she heard it. It is not clear whether Simmons intended his remark to be heard by Jones, whether it was said in an aside to Testerman or loud enough for the employees present to hear it easily. Nor is there evidence as to the nature of the conversation between Simmons and Testerman that preceded the remark. In these circumstances, although the issue is not free from doubt, I cannot find with the assurance the statute requires that the remark was violative of Section 8(a)(1) of the Act.

5. Supervisor Simmons' direction to Nancy Fulp on July 20 to place union literature under her desk in her locker. Kale's memo on March 27, prior to the beginning of union activity, established the rule that newspapers, magazines, etc., should not be allowed in work areas. Inasmuch as Respondent's policy was nondiscriminatory and in accordance with sound housekeeping practices, I conclude that Simmons did not unlawfully require Fulp to remove union leaflets from her desk area.

6. Having found that Supervisor Simmons did not closely watch Nancy Fulp for an unusual period of time on July 20, I find that Simmons did not engage in unlawful surveillance of Nancy Fulp on this occasion.

B. *Conduct Violative of Section 8(a)(3) and (1) of the Act*

I conclude that Respondent violated Section 8(a)(3) and (1) of the Act by the discharge of Ralph Meadows on May 17.

Meadows, a veteran of 11 years' employment with Respondent, was summarily discharged on May 17 pursuant to Respondent's business policy of terminating employees who received four reprimands within a 12-month period.

As indicated above, Meadows was an active, if not the most active, union adherent at the Kernersville plant. Early in April he informed his supervisor of his support for the Union and his role as an in-plant union organizer.

Prior to 1976 Meadows appears to have had a satisfactory employment record, with the potential of becoming an excellent leadperson. Beginning in October 1976, however, Meadows began to receive a number of reprimands, primarily for lateness or absenteeism. Although he had accumulated four reprimands within a 12-month period in 1977, then Plant Manager Sloan decided not to discharge him because of his excellent potential. Despite his reprimands, Meadows continued to be a very good employee when he wanted to perform his job.

I have found above that on May 11 Watson warned Meadows that Meadows was being watched by management because of Meadows' union activity. On that occasion Watson restricted Meadows' movements in the plant, specifically directing him not to go to other departments, particularly the inspection department. On the same day Kale interrogated Meadows about the Union and solicited his views as to the resolution of grievances.

The incident that precipitated Meadows' discharge occurred on the very next day, May 12. On that day Meadows prepared a maintenance order for machine number 2 and, in accordance with his assigned duty, delivered the order to the shop. Respondent's Exhibit 4 is a rough plan of Respondent's plan showing Meadows' route to the shop through the maintenance department, past the supply area and into the shop. Returning to his own work area, Meadows chose a route through the inspection department rather than retracing his steps. Having examined Respondent's Exhibit 4, I am satisfied and I find that the route through the inspection department was, as Meadows told Watson, the shorter of the two routes.

As soon as Simmons observed Meadows walking through the inspection department Simmons rushed to call Watson to report the presence of Meadows in the inspection department. Finding Watson unavailable, Simmons came out of his office and noted for the first time that Meadows had stopped to talk to Goolsby, whose machine was not operating at the time. Goolsby did not testify and the record is silent as to whether or not Meadows had distracted her from her job as Simmons immediately reported to Fields. Fields then reported the incident to Kale. The matter was discussed by Respondent's top management. Aware that a fourth reprimand would result in Meadows' discharge, all of them agreed that Meadows deserved such a reprimand because he was in the inspection department without permission and had distracted an employee.

The official reprimand, dated May 14, before Meadows had an opportunity to speak in his defense, does not mention the fact that Meadows had stopped to speak to Goolsby, but charges that Meadows' return route was "not the customary or acceptable route to return to your work area." The reprimand also notes that Meadows, upon his return, had visited an employee in the production department at frame number 3. The reprimand relies further on the fact that Meadows had carried a cup of coffee through the inspection department, contrary to the rules of that Department. (The rule applied to employees of the inspection department.)

Respondent argues that Meadows' presence in the inspection department could only be justified if it was directly related to his work, for example, bringing rework cloth from that department to the production department with a forklift. It is clear, however, that Meadows' presence in the inspection department on May 12 was not a frolic and detour. It was not a violation of Kale's memo of March 27 ordering supervisors to stop employees in one department from visiting employees in another department, a practice Kale recognized had been an ongoing problem for some time and would be difficult to stop. Meadows was engaged in his normal duties as a carrier of maintenance orders. He had not entered the Inspection Department to visit and distract Goolsby or any other employee. There is nothing in the record to suggest that employees in other departments were not normally permitted to traverse the Inspection Department in the performance of their official duties. Indeed, the evidence is to the contrary. Several witnesses testified that it was not unusual to walk through that department to get from one location in the plant to another. Watson's characterization of the inspection department as an "unacceptable return route" for leadpersons in the production department appears to be an instant rule, applicable for the first time to Meadows.

While Meadows conceded that he had carried a cup of coffee through the inspection department and had spoken briefly to Earlie Johnson, an employee in the production department, these would hardly seem to be matters of such importance to warrant an official reprimand, particularly where the reprimand would lead to his automatic discharge.

I conclude that Respondent issued a fourth reprimand to Meadows on May 14 and discharged him on May 17 because he was an outspoken advocate for the Union and an aggressive solicitor with the ability to influence other employees to vote for the Union in the forthcoming election. Respondent seized upon Meadows' presence in the inspection department on May 12 as a pretext to conceal its real motive, that of discouraging union membership and activity among its employees. Such conduct violates Section 8(a)(3) and (1) of the Act.

C. *Conduct Not Violative of Section 8(a)(3) and (1) of the Act*

1. I conclude that Respondent did not violate Section 8(a)(3) and (1) of the Act in the discharge of Sylvia Bailey.

The facts, except for the resolution of credibility between Gilliam and Bailey, are set forth above. In brief, Bailey, an employee of 6 months, was discharged as of August 27 because Gilliam informed Simmons that she had left her job during her shift without asking for and without receiving permission.

Bailey is not an aggressive individual. She signed a card for the Union and engaged in some union activity, including the wearing of a union button for several days at election time. However, she did not appear to me to be the type of individual with the ability strongly to in-

fluence other employees for the Union. In this respect her position was similar to that of other employees who openly wore "Vote Yes" buttons with impunity. Her name does not appear on the handbill distributed by the Union on July 19. Unlike Meadows, she could not have been a subject of special concern to Respondent.

I have found above that Bailey was mistaken about the date in August she left work early because she was ill. Even assuming she had her Mondays confused and intended to testify that she was assigned to the hot slitter for the first time on August 27 instead of August 20, correcting her testimony would not accord with Gilliam's credited testimony, supported by her termination notice, that her last day of employment was August 27, not August 29.

Although a number of Respondent's supervisors engaged in violations of Section 8(a)(1), there is no allegation or evidence that Gilliam participated in any such conduct. There is no evidence that Gilliam was unfriendly to Bailey. Even when she left her job on August 27 Gilliam at Bailey's request brought Bailey's lunchbox to her. As Simmons testified, there was no reason for him to disbelieve Gilliam inasmuch as Gilliam had previously granted Bailey permission to go home early because she was sick or her baby was sick. Respondent's records show that Gilliam gave Bailey permission to leave early on August 22 because her baby was sick. She was given permission to leave early on April 28, May 1 and 25, and July 16.

Taking all the evidence into consideration, including the lack of substantial motivation on Respondent's part to discharge Bailey because of her union activity, the fact that Gilliam freely granted Bailey permission to leave early on a number of occasions, including the week immediately preceding the incident of August 27, Gilliam's personal conduct with respect to Bailey, and Gilliam's rectitude during the Union's entire organizational campaign, I credit Gilliam over Bailey and conclude that she did not, as she testified, ask Gilliam's permission to leave early on August 27. I also conclude, based on the same evidence, that the evidence does not preponderate for a finding that Respondent in discharging Bailey violated Section (a)(3) and (1) of the Act. I shall recommend that this allegation of the complaint be dismissed.

2. I conclude that Respondent did not violate Section 8(a)(3) and (1) of the Act by issuing verbal counseling to Benjamin Fulp, Jr., on November 16.

The statute, of course, protects employees from all forms of discrimination to discourage union activity. However, the extensive evidence adduced by the parties in this case as to Fulp Jr.'s verbal counseling on November 16 raises a molehill to the stature of a mountain. I cannot believe that Respondent's top management 4 months after the July 20 election would use this means to punish Fulp Jr. for his union activity or his refusal to engage in antiunion activity.

I have considered carefully the facts relating to Fulp Jr.'s conduct on November 14 resulting in the verbal counseling administered to him a few days later. I need not and do not make any definitive judgment as to whether or not such counseling was deserved. Looking at the incident from Fulp Jr.'s point of view, he was not an electrician and was not obligated to perform any electrical work, however minor. Kale conceded as much in his testimony. On the other hand, Sibley took the position that Fulp Jr., a leadman pipefitter, was intelligent enough to throw the power off, label the wires with tape, and disconnect them. He could have loosened the bolts to permit the motor to be removed from the base to save some time. He did nothing. As a result, the number 3 frame was inoperative during the entire third shift.

The record is clear that Fulp Jr. was upset and irritated because Respondent had refused to pay the entire cost of an electrical course to qualify Fulp Jr. to perform electrical work. He made his views known to Sibley and Kale and subsequently filed charges of age discrimination with the EEOC. Whether or not this influenced his refusal to change the motor on November 14 is speculative. What is not speculative is Sibley and Kale's annoyance with Fulp Jr.'s failure as leadman to take charge of an electrical-mechanical problem and make some effort to solve it.

Taking into consideration the fact that verbal counseling is not a form of discipline, but merely involves an attempt to correct an employee's work performance, I cannot find that Respondent verbally counseled Fulp Jr. on November 16 to discourage union and concerted activitiy. Another question would be presented if Fulp Jr. had been issued a formal reprimand. But a mild, nondisciplinary lecture on a debatable issue of employee conduct is hardly the stuff of which an unfair labor practice can be made in the circumstances of this case.

I shall recommend that this allegation of the complaint be dismissed.

D. *The Refusal To Bargain*

All production and maintenance employees at the Employer's Kernersville, North Carolina, finishing plant; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The General Counsel introduced into evidence authorization cards of 84 or 86 employees employed in the above appropriate unit on May 14 when Harold McIver claimed majority status for the "AFL-CIO and/or its appropriate affiliate" and demanded bargaining. The Company did not respond. The parties agree that on May 14 the unit comprised 151 employees.

At the hearing counsel for Respondent stated that Respondent had a good-faith doubt that the "AFL-CIO and/or its appropriate affiliate" represented a majority of the employees in the above unit. Moreover, Respondent did not consider the letter a proper demand letter in view of the ambiguity in the designation of the bargaining representative.

The complaint alleges that Respondent violated Section 8(a)(5) by refusing to bargain with the ACTWU on and after May 14. The General Counsel asks that a bargaining order on behalf of that Union issue now to remedy Respondent's extensive unfair labor practices.

It is Respondent's position that the authorization cards on which the General Counsel relies do not designate the ACTWU as the employees' bargaining representative and therefore cannot establish a violation of Section 8(a)(5) or permit the issuance of a bargaining order now on behalf of the Union. Alternatively, Respondent argues that of the cards admitted into evidence some 39 were obtained through improper solicitation and may not be counted for that reason. Further, Respondent asserts that a bargaining order, in any event, would be inappropriate in this case because the alleged unfair labor practices are not serious enough to warrant such a remedy.

I shall consider these arguments *seriatim.*

1. The authorization cards as a sufficient designation of the ACTWU as the employees' bargaining representative

The parties recognize that there is a paucity of Board or court cases on this point. It is clear, at least with respect to a showing of interest, that cards designating the AFL-CIO and/or its appropriate affiliate as a bargaining representative are sufficient to justify the direction of an election for a labor organization within the designated class.[11] It is equally clear that such cards, for the purposes of a Board election and possible subsequent certification, do not sufficiently identify a labor organization so as to accord employees their Section 7 rights to select a bargaining representative of their own choosing.[12]

The issue before me does not involve the selection of a particular union by ballot in a free and fair election. It is complicated by the fact that Respondent's unfair labor practices may have so poisoned the air that such an election cannot be held in the forseeable future. Although the Employer's conduct cannot convert a nonmajority into a majority, it is in this context that I must examine the evidence to determine whether there is a sufficient basis to conclude that ACTWU was the choice of a majority of Respondent's employees on May 14 as their collective-bargaining representative.

As indicated above, the employees initially sought representation by the Teamsters and 88 employees signed authorization cards for that union. The Industrial Union Department of the AFL-CIO then took over the campaign. At many meetings the employees were informed by Motley, both before and after they signed class designation cards, that one of two unions, the Rubber Workers or the ACTWU, would represent them in bargaining with Respondent. On May 31 or June 1 Motley announced to the employees in meetings for the several shifts that the ACTWU had been chosen to represent them in their best interest. There is no evidence that any of the employees protested or sought to withdraw their authorization cards. However, Motley did not offer the employees new authorization cards, identifying the ACTWU as the employees' bargaining representative. Nor were the employees asked to substitute the ACTWU for the "AFL-CIO and/or its appropriate affiliates" on the authorization cards previously executed.

In *B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg.*, 251 NLRB 1337 (1980), the Paint Makers and Teamsters undertook an organizational campaign among the employer's employees. Twenty employees signed cards for the Paint Makers and one employee signed a card for the Teamsters. The unions petitioned for joint representation. Based on the unions' card majority, the Administrative Law Judge recommended a bargaining order under *N.L.R.B.* v. *Gissel Packing Co., supra,* in favor of the joint petitioners. The Board reversed, finding that there was no evidence in the record that the employees who executed cards for the Paint Makers were ever informed that the signing of these cards would constitute authorization for both unions to represent them as joint representatives. The Board issued a bargaining order in favor of the Paint Makers, for whom a majority of the employees had signed cards, contingent upon a revised tally of ballots showing that the joint petitioners had lost the election. Citing *The National Heating Company*, 167 NLRB 534, 540 (1967), the Board pointed out that, although an inference was warranted that the employees were influenced to vote against the unions because of the employer's unfair labor practices, the inference was equally warranted that the employees may have voted against the joint petitioners because they did not desire joint representation. In its decision the Board distinguished two cases reaching a contrary result.[13] In *Graneto-Datsun, a Graneto Company*, 203 NLRB 550 (1973), the Board ordered bargaining for two unions jointly in a single service department unit, although each union has obtained its own authorization cards in one of two separate units. In that case the employees had complied with a joint request of both unions to participate in a recognitional strike. Moreover, the Board was concerned that the existence of two units would constitute the fragmentation of a clearly appropriate unit. In *Bolsa Drainage, Inc.*, 242 NLRB 728 (1979), a group of employees signed authorization cards for the Teamsters and the Operating Engineers separately. However, they were told by the union officials at that time that the unions would jointly represent them. On the same day the two unions asserted their majority status and demanded bargaining as joint representatives. The Board ordered bargaining on that basis.

The above cases are pertinent and informative, but they are not controlling. I have considered this matter most carefully, not only with respect to the arguments for and against a finding that Respondent has violated Section 8(a)(3) and that a bargaining order is necessary to remedy its unfair labor practices, but the consequences of such a finding in the administration of this Act.

[11] *O & T Warehousing Co., a Division of Boline Corporation*, 240 NLRB 386 (1979).

[12] *Ibid.* As indicated above, the petition in the instant case was amended to place the name of the ACTWU only on the ballot.

[13] The Board did not mention or discuss *Coating Products, Inc.*, 251 NLRB 1271 (1980), issued on the same day. In that case the authorization cards, upon which a *Gissel* bargaining order was based, were in the name of the American Federation of Labor and Congress of Industrial Organizations. The charging party and the petitioner in the representation case was District Lodge No. 91, IAM. The respondent was ordered to bargain with that union. It is noted (*Id.* at 1279) that after the signing of cards the employees shifted to District Lodge 91. I place no reliance upon this Decision in the absence of evidence as to the circumstances under which the employees "shifted" their allegiance from one union to another.

During the campaign the employees were told that by signing the class designation cards they were selecting one of two unions to represent them. Following the demand for recognition they were informed that that union was the ACTWU. The question is, assuming proper solicitation of employee signatures, did the employees select the ACTWU to represent them as of May 14, at least 2 weeks before that Union was designated by the AFL-CIO as their bargaining representative. In my opinion, the answer must be no. Nothing can be clearer than the statutory requirement that employees shall be free to select a bargaining representative of their own choosing. I conclude that the ACTWU was not the statutory bargaining representative of Respondent's employees on May 14. No finding of a violation of Section 8(a)(5) can be predicated on Respondent's refusal to recognize and bargain with the ACTWU on that date and no bargaining order can issue on behalf of that Union.

While it may be convenient or useful for unions to solicit employee signatures on class designation cards, such convenience cannot operate to infringe upon the employees' statutory right under Section 7 to act for themselves in the selection of a bargaining agent. Employees are not sheep to be herded together by a parent organization and thereafter assigned to a subordinate union to represent them in their best interest for the purposes of collective bargaining.

Accordingly, I shall recommend that the allegation of a violation of Section 8(a)(5) be dismissed and I shall not grant a bargaining order in the absence of evidence that the ACTWU at any time during the campaign represented a majority of Respondent's employees in the appropriate unit.[14]

2. Alternative findings as to the validity of individual cards

In the event the Board or the court disagrees with my finding above that Respondent has not violated Section 8(a)(5) of the Act because of the class designation on the authorization cards, I set forth below my findings with respect to the validity of individual authorization cards challenged by Respondent.

The cards introduced into evidence are single-purpose cards designating the "AFL-CIO and/or its appropriate affiliates" as the employee's bargaining agent in matters of wages, hours, and other conditions of employment.

The applicable rules relating to alleged misrepresentation of single-purpose authorization cards are set forth in *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963); *Levi Strauss & Co.*, 172 NLRB 732 (1968); *Hedstrom Company, a subsidiary of Brown Group, Inc.*, 233 NLRB 1409 (1979); *N.L.R.B.* v. *Gissel Packing Co., supra.*

Cumberland Shoe and *Levi Strauss* hold that single-purpose cards are not invalid because the signatory was told that a purpose of the cards was to secure an election as distinguished from the case where the solicited employee was told that the only purpose of the card was to obtain an election. In *Gissel* the Supreme Court approved the Board's holding in *Levi Strauss* that the Board will not probe a card signer's subjective reasons for signing a card in the absence of clear proof of fraud or coercion. In *Hedstrom* the Board held that statements made by card solicitors that the employees "wanted to see if they could get the Union up for a vote" and that "if there was enough of a percentage then it would come up for a vote" were not an abandonment of the plain statement on the card or a misstatement of its purpose and that cards so solicited were valid.

a. *Cards solicited by Al Motley*

Respondent challenges the cards of four employees, including that of Melton, whose name does not appear on the stipulated list of employees employed on May 14, on the ground that these employees were told by Motley that the card was a moral, not a legal, obligation. I find no merit in this challenge. Motley also told the employees that the cards were representation cards to show the Union's strength, but the employee would not incur a dues obligation to the Union by virtue of signing that particular card. I find the cards solicited by Motley valid. They will be counted.

b. *Cards solicited by Ralph Meadows*

Respondent challenges the cards of 17 employees solicited by Meadows. Meadows testified that he told all the employees whose signatures he solicited to read the card, that the cards were "merely formal representation of percentage of people, to bring in a union for an election purpose only, for the purpose of an election, and not to sign up for dues, not because they were signing up for dues, or not because they were signing because the union will be here; just solely for the purpose of representation." At another point in his testimony Meadows stated that he told Christine Goolsby that the card was "just for a percentage of representation inside of the plant for an election." On another occasion Meadows testified that he told an employee the card was for representation only, for the election, but denied that he had said it was only for an election. On another occasion Meadows testified he told an employee that the card did not mean the employee would pay dues, to read the card carefully, that the card was for the purpose of a percentage to get an election brought into the plant. Meadows also testified that he was told by Motley that the cards were not for a union, but just for representation, that they would "get a percentage enough, and then we could ask for an election." In their brief counsel for Respondent expressed doubt that Meadows used the precise terminology attributed by him to Motley. I agree. Moreover, I doubt that Meadows used precisely the terminology to which he testified with respect to the employees he solicited. It is apparent that Meadows was somewhat confused as to exactly what he told the employees when he asked them to sign authorization cards. The most that I can make of his testimony, taken in its entirety, is that he told the employees that the card did not mean they were incurring a dues obligation; it was merely a representation card, not a union card; that a certain percentage of employees were needed to obtain a Board election and that the

[14] Inasmuch as the question whether Respondent violated Sec. 8(a)(5) by refusing to bargain with the "AFL-CIO and/or one of its affiliates" was not litigated before me I make no findings and draw no conclusions with respect to that question.

needs for an election and representation were the "sole" purposes of the cards. I find the cards he solicited valid.

c. *Timothy Jones*

Jones testified initially that David Carter, who solicited Jones' signature on an authorization card, told Jones that the card was for union representation. However, on cross-examination Jones testified that his affidavit was correct in stating that Carter said the card was specifically for an election only. I find Jones' card invalid.

d. *George Britton*

Britton's card was solicited by Hattie Jeter. Jeter affirmed a statement in her affidavit that she told Britton that the card "didn't mean he was joining the Union but the card was just to see if we could get an election." I find Britton's card invalid.

e. *Steve Nelson*

Nelson testified that Meadows gave Nelson an authorization card at a union meeting conducted by Motley. Nelson's affidavit states that "Al told me the card was specifically for an election only." However, Motley did not speak to Nelson alone, but was addressing the entire meeting. According to Nelson's testimony, Motley said that the card was for the purpose of an election, of a union election for representation and that if the Union won the election the employees would be asked to sign another card to join the Union. Nelson took Motley's words to mean the card was for the purpose of a union election only. Nelson testified that he read the card before he signed it and that Motley also said that the purpose of the card was for the election, for the purpose of getting union representation. I conclude that Nelson was not told by Motley that the purpose of the card was for an election *only*. Inasmuch as the card clearly stated that its purpose was for representation, Nelson's subjective interpretation of what Motley told the assembled group of employees is not sufficient to invalidate Nelson's card. Nelson's card is valid.

f. *William Gray Doby*

Tony Dillard testified that he gave Doby a card in the bathroom at the plant, that Dillard asked Doby to read the card and to sign the card if Doby wanted union representation. Doby testified that General Counsel's Exhibit 78 contained his signature, that he read whatever was on the card, and filled it out himself. However, Doby also testified that he thought the card said something about an election and he did not remember "that part about being represented by them." Doby testified further, contradicting Dillard, that the card was given to Doby by Christine Goolsby and that she said it was for an election only and it was for a "Rubber Union." I do not credit Doby. There is no evidence that any authorization card distributed to employees in this campaign contained on its face the word "election" or failed to state that the signer desired union representation. I credit Dillard and find that he solicited Doby and told Doby to sign the card if Doby wanted union representation. Doby's card will be counted.

g. *Ellsworth Jessup*

Ronald Dillard testified that he solicited Jessup's signature, that Dillard told Jessup to read the card; it was to get union representation. Jessup testified that Dillard said there was no obligation, just trying to get enough cards to get an election for a union. Assuming for purposes of this finding only that Ellsworth Jessup is, in fact, the same person as James E. Jessup, I find Jessup's card valid and it will be counted.

h. *Elmer Ayres*

Ronald Dillard solicited Ayres' card. Dillard testified that he told Ayres to read the card, that it was to get a union. Ayres testified that Dillard said the purpose of the card was to see if they could get enough signatures for an election. Inasmuch as there is no evidence that Dillard told Ayres the only purpose of the card was to get an election, I find Ayres' card valid. It will be counted.

i. *Mary Adams*

Ronald Dillard solicited Adams' card. He told her to read the card so that she understood it, that it was to get union representation. Adams did not recall who gave her the card, but testified that Motley said at a meeting where she received the card that they had to have a certain amount of cards for an election. I find Adams' card valid.

j. *Steve Minton*

Ronald Dillard also solicited Minton's card. Dillard testified that he told Minton, as Dillard had told other employees, to read the card, its purpose was to get union representation. Minton testified that he and Dillard received cards from Motley. Minton did not recall exactly what Motley said, but believed Motley said, if they got enough cards signed, they might be able to hold an election. I find Minton's card valid. It will be counted.

k. *Laverne Wilson*

Evon McClure testified that he solicited a card from Wilson and told her it was for union representation. Wilson testified that she signed the card at a union meeting and that Motley said that the card was for an election, that they had to have a certain percentage. I find Wilson's card valid and it will be counted.

l. *Margaret Peterson*

Peterson testified that she was given the card by Tony Dillard and that Dillard told Peterson that by signing the card they would work toward getting union representation. Peterson testified further that she had stated in her affidavit Dillard told her that "the card was specifically for an election only." However, Peterson denied that this statement was, in fact, made by Dillard. She explained that she had answered "yes" to a leading question put to her by the Board agent who took her affidavit, that she was nervous and was not thinking. Although she re-read her affidavit, the fact that the statement was erroneous did not penetrate and she did not protest its inaccuracy.

Peterson impressed me as a very honest and truthful person. I credit her testimony that Dillard did not tell her that the purpose of the card was for an election only. Her testimony indicates the danger of leading questions in this very sensitive area of the law. Her card is valid and will be counted.

m. *Evon McClure and cards solicited by McClure*

McClure testified that he received his card from Motley and was told by Motley that McClure's signature was needed for union representation. McClure also told other employees whose cards he solicited that he needed the card for union representation. McClure's affidavit states that Motley told McClure that Motley was trying to get enough cards signed to get an election, and that was all Motley said. McClure's affidavit also states that McClure told the employees whose signatures he solicited that McClure needed the cards signed to get an election for the Union. Inasmuch as neither McClure nor employees solicited by McClure were told that the only purpose of the cards was for an election, I find McClure's card and cards solicited by him to be valid. They will be counted.

Based upon the foregoing and in the event higher authority disagrees with my finding that the authorization cards introduced into evidence are not sufficient evidence that the ACTWU was the employees' majority bargaining representative on May 14, I find, alternatively, that the Union represented 82 or 84 employees on May 14, a clear majority.

3. Alternative finding with respect to the necessity of a bargaining order on the merits

I find, alternatively, in the event my primary finding with respect to the majority status of the ACTWU on May 14 is not acceptable, that Respondent's extensive unfair labor practices set forth above, including the discharge of a leading union adherent and numerous threats by supervisors and the plant manager to close the plant if the Union won the election, have made a fair election unlikely in the forseeable future. Under the doctrine of *N.L.R.B* v. *Gissel, supra*, a bargaining order is necessary.

E. *The Objections to the Election*

Based upon my findings with respect to Respondent's unfair labor practices, I find merit in the Union's Objections 1, 3, 4, 5, 6, 7, 8, 9, 11, and 14. I shall recommend that the election held on July 20 be set aside and that the Regional Director for Region 11 conduct a new election in accordance with the Board's established Rules and Regulations.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[15]

The Respondent, Burlington Industries, Inc., Kernersville Finishing Plant, Kernersville, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Creating the impression of surveillance of union activity by informing employees that they are being watched by management because of their union and concerted activities or that management has a list of prounion employees, thereby restraining and coercing employees in the exercise of their Section 7 rights.

(b) Restricting the movement of employees within the plant to restrain and coerce them in the exercise of their Section 7 rights.

(c) Interrogating employees coercively with respect to their union and concerted activities.

(d) Soliciting grievances to restrain employees from engaging in union activities.

(e) Threatening to discharge employees because of their union and concerted activities.

(f) Promising benefits to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

(g) Threatening to close the plant if the Union wins an election to restrain and coerce employees in their selection of a bargaining representative.

(h) Threatening employees with harder work if the Union wins an election.

(i) Threatening not to negotiate with the Union if the Union wins an election.

(j) Engaging in surveillance of employees by closely watching the activity of union supporters to restrain and coerce employees in the exercise of their Section 7 rights.

(k) Threatening that a lot of employees would be hurt if the Union wins an election.

(l) Threatening employees with the loss of job opportunities in Forsyth County, North Carolina, in the event the Union wins an election.

(m) Discharging or otherwise discriminating against employees to discourage union activity.

(n) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.[16]

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Ralph Meadows immediate and full reinstatement to his former position, if available, or, if that position no longer exists, to a substantially equivalent position, with the wage rate he enjoyed at the time he was discharged, plus any increases, without prejudice to his seniority and other rights and privileges, and make him whole for all losses suffered by him as a result of the dis-

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[16] In view of Respondent's extensive violations of the Act, a broad order is necessary. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

crimination against him in the manner set forth by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950); *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Rescind and remove from the personnel record of Ralph Meadows the disciplinary reprimand of May 14, 1979.

(c) Post at its plant at Kernersville, North Carolina, copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges:

1. That Respondent violated Section 8(a)(1) if the Act by:

(a) Supervisor Watson's direction to Earlie Johnson on May 11 not to leave his working area.

(b) Supervisor Crawford's rescheduling of break periods of Evon McClure.

(c) Supervisor Crockett's comment to Edgar Wayne Bryant on July 16 that the Union was going to brainwash Bryant.

(d) Supervisor Simmons' statement to Supervisor Lacy Testerman on July 20 that Simmons' name would be "Roy SOB Simmons" on Monday.

(e) Supervisor Simmons' direction to Nancy Fulp on July 20 to place union literature in her locker.

(f) Supervisor Simmons' observing the work of Nancy Fulp on July 20.

2. That Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) The discharge of Sylvia Bailey.

(b) The verbal counseling of Benjamin Fulp, Jr.

3. That Respondent violated Section 8(a)(5) of the Act by the refusal to recognize and bargain with Amalgamated Clothing and Textile Workers Union, AFL-CIO, on May 14, 1979.

4. And insofar as the complaint alleges violations of the Act other than those specifically found herein.

IT IS FURTHER ORDERED that Case 11-RC-4707 be, and it hereby is, severed from this consolidated complaint and remanded to the Regional Director for Region 11. Inasmuch as the Petitioner has not received a majority of the valid votes cast and I have sustained objections to the conduct of the election of July 20, 1979, it is hereby ordered that the election conducted by the Regional Director on the aforesaid date be, and it hereby is, set aside. The Regional Director shall conduct a new election under the Board's established policies and Rules and Regulations, when, in his discretion, a fair and free election can be held.

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."